

**WARNING LETTER
AND
NOTICE OF AMENDMENT**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 3, 1997

Mr. David Sinclair
Vice President of Operations
Enstar Natural Gas Company
P.O. Box 190288
Anchorage, Alaska 99519-0288

CPF No. 57008

Dear Mr. Sinclair:

On August 12 and 13, 1997, representatives of the Western Region, Office of Pipeline Safety, pursuant to Chapter 601 of 49 United States Code, conducted an on-site inspection of your anti-drug and alcohol misuse program at your office in Anchorage, Alaska. Field inspection of your specimen collection site at Allvest Laboratories, Inc. was completed as part of your program evaluation.

As a result of the inspection, it appears that ENSTAR has committed probable violations of pipeline safety regulations, Title 49, Code of Federal Regulations, Parts 40 and 199, as noted below. The items inspected and the probable violations are:

- 1. §199.11(c)(7) requires each operator to ensure that random drug tests conducted under this Subpart are unannounced and the dates for conducting random drug tests are spread reasonably throughout the calendar year.**

Enstar did not reasonably spread their random drug tests throughout the year in 1996. Approximately 39 percent of the random drug tests performed during 1996 were performed in December 1996. Enstar must ensure that the random drug tests are more evenly distributed throughout the calendar year. This will help ensure that temporary summer workers are tested at an annualized rate similar to Enstar full time employees.

2. **§199.11(b) allows an operator to decide not to drug test after an accident, but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.**

Enstar does not have adequate post accident drug testing procedures. Provisions that will allow Enstar to decide not to drug test an employee after the occurrence of an accident must be added to Section 5.7.2 *Post Accident Testing* of Enstar's *Drug and Alcohol Policy*. These provisions must be implemented in accordance with 49 CFR §199.11(b)

3. **§199.9(a) prohibits an operator from knowingly using an employee who - Fails a drug test required by this Part and the medical review officer (MRO) makes a determination under 199.15(d)(2); or refuses to take a drug test required by this part.**

Section 3.16 *Fail a Drug Test* and Sections 7.3 through 7.5 *Disciplinary Action for Violation of Policy* of Enstar's *Drug and Alcohol Policy* do not adequately address this regulatory requirement. A medical review by the (MRO) of drug testing results is mandatory before considering a drug test as failed. The Enstar anti-drug plan must also be modified to reflect that §199.9 only requires an operator to remove an employee from a covered function if that employee has either failed a drug test or refuses to take a drug test.

4. **§199.9(b)(2) allows an operator to use a person in a covered function if they have been recommended by the medical review officer to return to duty in accordance with §199.15(c).**

Section 4.3 *Employee Assistance and Rehabilitation* of Enstar's *Drug and Alcohol Policy* incorrectly allows the Employee Assistance Program counselor or the MRO to recommend an employee for return to duty under a covered function. The procedures must be clarified to ensure that only the MRO can recommend an employee for return to duty in a covered function.

Under 49 United States Code §60122, you are subject to a civil penalty not to exceed \$25,000 for each violation for each day the violation persists up to a maximum of \$500,000 for any related series of violations. We have reviewed the circumstances and supporting documentation involved for violation number 1, and have decided not to assess a civil penalty. We advise you however that should you not correct the circumstances leading to the violation, we will take enforcement action when and if this violation comes to our attention.

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In regard to violation items numbered 2, 3, and 4, relating to your written procedures for operations, maintenance, and emergencies, the Office of Pipeline Safety, is issuing you a Notice of Amendment. As provided in 49 C.F.R. §190.237, this notice serves as your notification that this office considers your procedures/plans inadequate. Under 49 C.F.R. § 190.237, you have a right to submit written comments or request an informal hearing. You must submit written comments or a request for a hearing within 30 days after receipt of this notice. After reviewing the record, the Associate Administrator for Pipeline Safety will determine whether your plans or procedures are adequate. The criteria used in making this determination are outlined in 49 C.F.R. §190.237. If you do not wish to contest this notice, please provide your revised procedures within 30 days of receipt of this notice.

When appropriate procedures have been prepared, submit them to the Director, Western Region, Office of Pipeline Safety, Research and Special Programs Administration, 12600 W. Colfax Avenue, Suite A-250, Lakewood, Colorado 80215. Please refer to **CPF No. 57008** in any correspondence on this matter.

Sincerely,

Edward J. Ondak
Director

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